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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,082	03/10/2004	Mireille Maubou	05725.1274-00	2687
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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
EXAMINER				
VENKAT, JYOTHSNA A				
ART UNIT		PAPER NUMBER		
1619				
MAIL DATE		DELIVERY MODE		
06/01/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/796,082

Applicant(s)

MAUBRU ET AL.

Examiner

JYOTHSNA A. VENKAT

Art Unit

1619

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1- 2, 4-5, 7-9, 27, 32, 36-37, 51, 53, 55, 57, 60-62, 64, 66 and 73 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-849)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims pending in the application are 1-2, 4-5, 7-9, 27, 32, 36-37, 51, 53, 55, 57, 60-62, 64, 66 and 73 .

DETAILED ACTION

Receipt is acknowledged of remarks and declaration under 37 C.F.R. § 1.132 filed on 3/18/09.

Status of claims

Claims 1- 2, 4-5, 7-9, 27, 32, 36-37, 51, 53, 55, 57, 60-62, 64, 66, 73, and 80-84 are currently pending in the application. Claims 80-84 are withdrawn from consideration being drawn to non-elected subject matter (election without traverse). Generic claims are examined to the extent that it reads on the elected species (calcium carbonate as water-insoluble particle) and polyethylenimine (cationic polymer of claims 32 and 37).

Claims 1- 2, 4-5, 7-9, 27, 32, 36-37, 51, 53, 55, 57, 60-62, 64, 66 and 73 are currently examined in the application.

Claim Rejections - 35 USC § 103

Claims 1, 2, 4-5, 7-9, 27,32, 36-37, 51, 53, 55, 57, 60-62, 64, 66, and 73 are rejected under 35 U.S.C. 103(a) as being obvious over the combination of U. S. Patents 6,635,702 ('702) and 5,580,494 ('494) and WO documents WO /2002/096,385 ('385) and WO /2002/096,377 ('377).

WO /2002/096,377 ('377) corresponds to **US 2004/0197355('355)** and WO /2002/096,385 ('385) corresponds to **US 2004/0197356('356)**. Examiner is relying on the **PGPUB documents for teaching of particles claimed.**

The instant application is claiming a cosmetic composition comprising:

1. At least one cross-linked copolymer comprising at least one methacrylic acid unit and at least one C1-C4 alkyl acrylate unit,

2. *Polyethyleneimine, and*
3. *Particles comprising at least 10% by weight of calcium carbonate*
4. *Silicone (claims 57, 60 and 62)*
5. *One agent beneficial to keratin material (claims 61 and 64)*
6. *Surfactant (claim 66)*

Patent '702 teaches aqueous surfactant compositions using the ingredients 1, and 4-6. Patent '702 teaches ingredient 1 as a rheology modifier. See the abstract for ingredient 1 and silicone. See col.3, lines 20 *et seq* and see col.4, clo.5, lines 1-40 for the cross-linked polymer which is formed from the two monomers and the cross linking agent. Patent '702 also teaches surfactants at col.5, line 41 to col.6, line 60 and teaches silicones at col.7, ll 25-68. Patent at paragraph bridging col.s 8-9 suggests adding insoluble compounds and this includes claimed calcium carbonate at col.8, line 60. See col.11, ll 50-53 for the additives and these belong to agent beneficial to keratin material like waxes. Patent at col.11, line 41 suggests adding cationic conditioning polymers. This is same as claimed cationic polymer. Patent also teaches the use of these compounds in the compositions in the form of shampoos at col.11, last paragraph. See all the examples. Patent '702 teaches under examples shampoos. Shampoos are for treating keratin material. The difference between the patent and the instant application is the patent '702 does not teach claimed cationic polymer polyethyleneimine or claimed at least 10 % by weight of calcium carbonate.

Patent '494 teaches shampoo compositions using the claimed cationic polymer (polyethyleneimine) along with surfactant. See the abstract, see col.2, ll 20-60 for the cationic polymer and see ll 61-62 for polyethyleneimine and see silicones at col.5, ll 5-45. Patent '494 at

col.6, ll 51-62 suggests adding thickeners also known as rheology modifiers to the compositions. See examples.

WO documents teach using 10 % of calcium carbonate in cosmetic compositions and using these compositions for hair.

WO /2002/096,377 ('377) corresponds to **US 2004/0197355('355)**. PGPUB ('355) also teaches cosmetic compositions comprising ingredient 3 and 5-6. See title, see the abstract, see paragraphs 22-31 for ingredient 3 (*Particles comprising at least 10% by weight of calcium carbonate*), see paragraphs 44-70 for ingredient 4 (*Silicone*), see paragraphs 61-80 for the cationic polymer, see paragraphs 35-60 for ingredient 6 (*Surfactant*) and see paragraphs 88, 90 for ingredient 5 (*One agent beneficial to keratin material*) and see paragraphs 93-94 for application of the compositions to keratin material. WO /2002/096,385 ('385) corresponds to **US 2004/0197356('356)**. PGPUB ('356) teaches cosmetic compositions comprising ingredient 3 and 5-6. See title, see the abstract, see paragraphs 21-30 for ingredient 3(*Particles comprising at least 10% by weight of calcium carbonate*), see paragraphs 44-70 for ingredient 4(*Silicone*), see paragraphs 71-91 for the cationic polymer, see paragraphs 35-43 for ingredient 6 (*Surfactant*) and see paragraph 99 for ingredient 5(*One agent beneficial to keratin material*) and see paragraphs 104-105 for application of the compositions to keratin material.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare compositions of patent '702 and add calcium carbonate and polyethyleneimine (cationic polymer) expecting beneficial effect to the hair. One of ordinary skill in the art would be motivated to add the cationic polymer into the compositions of '702 expecting that the compositions which has the acrylic acid/alkylacrylate polymer provides

acceptable rheology without significant increased or decrease in viscosity or pH, with no separation settling with extended periods of time and adding the polyethyleneimine into the compositions provide conditioning effects which is excellent for the keratin and adding calcium carbonate particles would provide the additional benefit of better hair style hold and increased sensation of thickness to the hair. This is prima facie case of obviousness.

Response to Amendment

The declaration filed under 37 CFR 1.132 filed 3/18/09 is insufficient to overcome the rejection of claims 1, 2, 4-5, 7-9, 27,32, 36-37, 51, 53, 55, 57, 60-62, 64, 66, and 73 based upon the combination of U. S. Patents 6,635,702 ('702) and 5,580,494 ('494) and WO documents WO /2002/096,385 ('385) and WO /2002/096,377 ('377) as set forth in the last Office action because: of the following reasons.

1. The declaration tested under inventive composition 0.2% of calcium carbonate and 0.2% of clay. Both these components are claimed in claim 1. However claim 1 recites at least 10 % by weight of calcium carbonate. Claim 53 recites the amount of particles. Results are not clear to the examiner.

2. Declaration tested one crosslinked copolymer. This copolymer is methacrylic acid/ethylacrylate copolymer. Claim 1 recites the crosslinked polymer can be at least one methacrylic acid and at least one C1-C4 alkyl acrylate. See paragraph[024] of the specification. What is the amount of ethyl acrylate and what is the amount of methacrylic acid tested in the declaration?

3. Declaration tested the two cationic polymers namely guar hydroxypropyl trimonium chloride and polyquaternium -7. **Elected cationic polymer is polyethyleneimine.** There is no

test results with respect to particle being mica-TiO₂ (comparative) and the cationic polymer is polyethylene imine.

4. In table 2, the comparative composition has better suppleness when the hair was wet, where as when the hair was dry the inventive composition has better results.

4. The test results for particle being clay did not show unexpected results.

The showing in the declaration is not commensurate with the scope of claims and the particle being clay did not show superior results than the comparative composition. Therefore 103 rejection is deemed proper.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /
Primary Examiner, Art Unit 1619